

**Internal Revenue Service
Appeals**

Department of the Treasury

Address any reply to:

Ohio Appeals Office

P.O. Box 2026

Cincinnati, Ohio 45201

Date: [REDACTED]

Employer Identification Number:

Form Number: 990

Person to Contact:

Contact Telephone Number:

Fax Number:

**Last Day to File a Petition with the United States
Tax Court**

Dear Taxpayer:

This is our final adverse determination as to your request for exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Your request for tax-exempt status is denied.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia must be filed within 92 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgment.

Our adverse determination was because [REDACTED] is not organized and operated exclusively for an exempt purpose within the meaning of Code section 501(c)(3).

Contributions to your organization are not deductible under Code section 170.

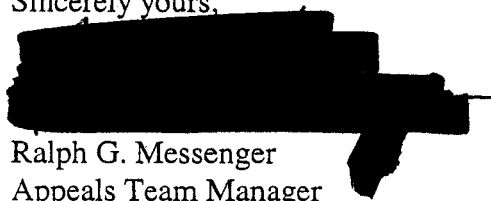
You are required to file Federal income tax returns on form 1120 for any years, which are still open under the statute of limitations. Based on the information you furnished, it appears that returns should be filed beginning with the year ending December 31, 2000. You should file any returns due for these years or later years with the Internal Revenue Service Center, Ogden, UT 84201-0012. Processing of income tax returns will not be delayed because you have filed a petition for a declaratory judgment under Code section 7428.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person identified on the front of this letter can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency by calling (513) 263-3260 or writing to 550 Main Street, Room 7010, Cincinnati, OH 45202. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

Sincerely yours,



Ralph G. Messenger
Appeals Team Manager

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.


You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,


Director, Exempt Organizations

Enclosures:

Enclosure 1, Adverse Determination letter
Forms 6018 (2)
Publication 892

Facts:

You were incorporated under the nonprofit corporation laws in the State of [REDACTED] on [REDACTED]. Your purposes are exclusively charitable, religious, educational, or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code.

You are formed as a collective body of licensed [REDACTED] users working in the construction and turnaround industry. You have a great deal of difficulty getting technical support from your [REDACTED] vendors as well as little support from the industry to train yourselves properly in the effective usage of the [REDACTED] and products. You have gathered together in hopes of establishing a network to support each other with respect to this product use. You established a free web site for your members allowing them to post daily problems and solutions with schedules and software. The web site is maintained by a hired web master service. You also hold monthly dinner meetings that include presentations by a volunteer on subjects relating to the use of the [REDACTED] product and management issues.

Although you are a membership organization, you stated your activities are open to anyone who has a need for the technical assistance and support. You currently have a distribution list of [REDACTED] people, of which [REDACTED] are actual members of your organization. One half of the approximate [REDACTED] to [REDACTED] people who attend your monthly dinner meetings are not members.

Your income is derived from money collected from attendees at the dinner meetings. Your expenses go towards the cost of meeting rooms, food catering for the meetings, and to maintain your web site.

Issues:

Is your organization operated exclusively for educational purposes and thus qualified for exempt status under section 501(c)(3)? Can your organization qualify for exempt status under any other subsection under 501(a)?

Law (Section 501(c)(3)):

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a), and reads in part as follows, "Corporations, and any community, chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or education purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(d)(3) of the Regulations defines the term "educational" as, (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In construing the meaning of the phrase "exclusively for educational purposes" in *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945), Ct. D. 1650, C.B. 1945, 375, the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes." This rationale applies equally to any category under section 501(c)(3).

Section 501(c)(3)-1(d)(1)(ii) of the regulation states that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest. Thus to meet the requirement of 501(c)(3), it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 74-116, 1974-1 CB 127 states that an organization whose membership is limited to organizations that own, rent, or use a specific type of computer and whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer is not exempt under section 501(c)(3) of the Code. By making specialized information available to its members, the organization was serving the private interest of its members rather than public interest.

Rationale:

You are a group of individuals who utilize the [REDACTED] and/or [REDACTED] products in your respective jobs. You state that you are not a "members only" organization but are open to anyone. Although you do not charge any membership fee, those who benefit from becoming a member and from participating in your activities and services are those individuals who actually use the [REDACTED] products. As determined in Rev. Rul. 74-116, providing specialized information to designated individuals, who in your case are your members and all others who use the products serves to benefit their private interest rather than the public interest.

Conclusion:

You are not operated exclusively for educational purposes and do not qualify for exemption under section 501(c)(3).

We have also considered whether you would qualify for exempt status as a business league described under section 501(c)(6) of the Code.

Law (Section 501(c)(6)):

Section 501(c)(6) provides for the exemption from Federal income tax of business leagues not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the I.T. Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest. Its activities should be directed towards the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

Revenue Ruling 83-164, 1983-2 CB 95 states that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does NOT qualify for exemption from federal income tax under (c)(6). Revenue Ruling 74-147 distinguished. Although both organizations have a common business interest concerning the use of computers, Rev. Rul. 74-147 directs its activities to users of computers made by diverse and competing manufacturers, while the organization in Rev. Rul. 83-164 directs its activities to users of computers made by one manufacturer. By directing its activities only to the users of brand M computers, the organization would be directing its activities towards the improvement of business conditions in only segments of the various lines of business to which its members belong. Because it limits its activities to the users of M computers, the organization helps to provide a competitive advantage to M and to its customers at the expense of M's competitors and their customers that may use other brands of computers. Thus the organizations activities are NOT directed towards the improvement of business conditions in one or more lines of businesses within the meaning of (c)(6).

In addition to promoting the common business interest of its members, a business league exempt under section 501(c)(6) of the Code must also seek to improve conditions in one or more lines of business. The term "line of business" has been interpreted to mean either an entire industry, see American Plywood Assn. V. U.S., 267 F. Supp. 830 (W.D. Wash. 1967), or all components of an industry within a geographic area, see Washington State Apples, Inc. v. Commissioner, 46 B.T.A. 64 (1942), acq. 1942-1 C.B. 17.

In National Muffler Dealers Ass'n, Inc. v. United States, 440 U.W. 472, 99 S. Ct. 1304, 59 L. Ed. 2d 519 (1979), the United States Supreme Court adopted the Internal Revenue Commissioner's interpretation of the line of business test that an association which is not industry wide should not be exempt. Accordingly the Court denied a tax exemption to an association of

franchisees of one brand of muffler because the association did not improve conditions of an industrial line, but, instead, promoted a particular product at the expense of others in the industry.

The court affirmed, holding that although an organization whose stated purpose is to facilitate the use and exchange of information regarding data processing equipment in general, the primary benefit inured to a single corporation, which was only a segment of the mainframe computer business, not a line of business. Guide International Corporation v. United States, 948 F2d 360, 1991. Guide argued that it is distinguishable from National Muffler because its activities improve several lines of business by enabling its members to perform data processing more efficiently. This argument is in direct conflict with Revenue Ruling 83-164 and was rejected in National Prime Users Group, Inc. v. United States, 667 F. Supp. 250 (D. Md. 1987) where exemption was denied to an association whose members consisted of users of computers of a single manufacturer because the association only improved conditions for members in those lines of businesses that used the particular computers. The court found an inherent competitive advantage for the computer manufacturer.

Rationale:

Again, your members represent people in the construction and turnaround industry who use the [REDACTED] and products distributed by one manufacturer. You are not promoting any particular line of business. You are promoting a single product, [REDACTED]. Thus, as in Rev. Rul. 83-164 and the court cases cited above, you are improving conditions of your members and others that use the [REDACTED] product rather than similar software products made by other diverse and competing manufacturers.

Conclusion:

You do not qualify as a business league under section 501(c)(6) of the Internal Revenue Code.